REMARKS

Reconsideration of this application as amended is respectfully requested.

Claims 1-17 are currently pending. Claims 1-4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,806,048 of Kiron et. al. (hereinafter "Kiron"). Claims 5-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiron and alleged common knowledge in the art.

Claims 1-8, 10, and 12-17 have been amended. New claims 18-23 have been added. Support for the amendments and new claims is found in Figures 1-2 of the drawings and pages 3-11 of the specification. Applicant respectfully submits that the amendments do not add new matter.

Applicant reserves all rights with respect to the applicability of the doctrine of equivalents.

The specification has been amended in the paragraph starting at page 6, line 6, to change "investment database 108" to "liquidity database 108." Support for the amendment is found in Figure 1 of the drawings and in the specification at page 7, lines 10-13. The amendment corrects an error that is readily apparent.

Claim 1 has been rejected under 35 U.S.C. § 102(b) on being anticipated by Kiron. The Examiner has stated the following:

> **Re Claim 1**: Kiron discloses a method of providing liquidity to an investment fund utilizing a liquidity vehicle, comprising:
>
> - Prompting at least one investment fund having a net share outflow to offer shares to the liquidity vehicle (Column 2 line 64 – Column 3, line 9)
> - The liquidity vehicle purchasing at least one offered share of the at least one investment fund with

proceeds of the purchase going to the at least one investment fund (Column 3, lines 12-14)

- Holding the at least one purchased share in the liquidity vehicle for a period of time (Column 3, numerals A, F, and G.)

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Applicant respectfully submits, however, that amended claim 1 is not anticipated under 35 U.S.C. § 102(b) by Kiron. Amended claim 1 includes the following limitations:

> 1. A method of providing liquidity utilizing a liquidity vehicle, comprising:
> (a) at least one investment fund wanting to receive liquidity services registering with the liquidity vehicle;
> (b) prompting at least one registered investment fund having a net share outflow to offer shares to the liquidity vehicle;
> (c) the liquidity vehicle purchasing at least one offered share of the at least one registered investment fund with proceeds of the purchase going to the at least one registered investment fund; and
> (d) holding the at least one purchased share in the liquidity vehicle for a period of time.

(emphasis added).

Kiron discloses the following:

> This process is made possible by the creation of a second type of security, which will invest substantially all of its assets in the target open end mutual fund shares. The preferred embodiment for this new security is a "closed end fund of funds," which has a fixed number of shares outstanding, and a constant portfolio which is invested exclusively in the shares of the targeted open end fund(s).

(Kiron Col. 2, lines 64-67; Col. 3, lines 1-4.)

Kiron also discloses the following:

> When all of the funds with superior returns have been identified and stored, and all the funds with lower than

> average risk have been identified and stored, the computer can then match up all of the different combinations of funds to determine which group contains the optimally lowest risk/ highest return ratio.

(Kiron Col. 6, lines 19-24)

Kiron further discloses the following:

> Thus, the reader will see that the index of mutual funds described herein provides a means for identifying superior historical performance within each subgroup obtainable through a screening process which minimizes the selection of high risk/low return open end mutual funds and maximizes the selection of those funds with low risk/high return statistical data...
> The creation of a separate security, the preferred embodiment being a "closed end fund of funds," provides the means for investing intra-day in the desired open end funds, and enables market participants to derive a real time valuation for linked derivatives.

(Kiron Col. 7, lines 26-42)

Kiron is fundamentally different from the amended claim 1. Kiron's invention discloses a financial process that securitizes open end mutual funds to facilitate intra-day trading of the funds and linked derivatives securities. The new security formed from the process will be based on a return/ risk ratio of an index of mutual funds which will invest substantially all of its assets in the targeted open end mutual fund shares. As a result, Kiron's invention can be listed on a stock exchange and traded like other types of security. Also, consider the following:

> Many investors, both professional and non-professional own multiple mutual funds in an effort to diversify their investment portfolio's. An index of open end mutual funds would allow greater diversification, lower transaction costs, expanded investment choices and the ability to measure their fund performance against a relevant benchmark index. The index can be calculated many different ways with a great

> deal of flexibility: equal price weighted, capitalization weighted, or geometrically weighted, depending upon need.

(Kiron Col. 3, lines 51-60)

Kiron discloses a securitization process. In contrast, amended claim 1 refers to a liquidity vehicle that provides liquidity.

In contrast with amended claim 1, Kiron does not disclose the limitation of at least one investment fund wanting to receive liquidity services registering with the liquidity vehicle. Kiron fails to disclose any such registration. In addition, Kiron fails to disclose the limitation of amended claim 1 of prompting at least one registered investment fund having a net share outflow to offer shares to the liquidity vehicle. Furthermore, Kiron fails to disclose the limitation of amended claim 1 of the liquidity vehicle purchasing at least one offered share of the at least one registered investment fund with proceeds of the purchase going to the at least one registered investment fund.

Kiron instead discloses a selection of funds from a plurality of funds based on the risk/return performance over a predetermined period of time and against a benchmark.

Applicant thus respectfully submits that amended claim 1 is not anticipated by Kiron under 35 U.S.C. § 102(b).

Given that claims 2-4 are dependent claims with respect to amended claim 1 and add limitations, applicant respectfully submits that claims 2-4 are not anticipated by Kiron under 35 U.S.C. § 102(b).

The Examiner has rejected claims 5-17 under 35 U.S.C. § 103(a) as being unpatentable over Kiron and alleged common knowledge in the art.

With respect to claims 5-7, the Examiner has stated the following:

> **Re Claim 5-7**: Kiron discloses the claimed method supra but does not explicitly disclose wherein at least one offered share is purchased in step (b) prior to the next trading day after the occurrence of an outflow, therein step (d) is performed prior to the next day following the occurrence of an inflow of shares of the same investment fund, and wherein step (d) is performed within five trading days of the occurrence of an inflow of share of the same investment fund on a trading day.
>
> However, Kiron does disclose that an open fund 'when scrutinized, can be listed on a stock exchange and traded at any second, minute or hour, regardless of the open fund N.A.V.' (Column 3, lines 11-13). Therefore it would have been obvious to a person of ordinary skill in the art to utilize the system of Kiron to perform these steps so that investors can buy or sell the securitized fund as often as they wish.

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Applicant respectfully submits that it would not have been obvious to use the system of Kiron to perform the methods of amended claims 5, 6, and 7. Kiron does not disclose any registration of an investment fund with a liquidity vehicle. The reference by the Examiner to investors buying or selling as often as they wish does not cure the deficiencies of Kiron. Moreover, the limitation of claim 5 regarding outflow and the limitations of claims 6 and 7 regarding inflow are not disclosed in Kiron nor are they obvious variations of Kiron.

Applicant thus respectfully submits that amended claims 5, 6, and 7 are not invalid under 35 U.S.C. § 103(a) in view of Kiron and alleged common knowledge in the art.

With respect to claim 8, the Examiner has stated the following:

> **Re Claim 8**: Kiron discloses the claimed method supra but does not explicitly disclose the step wherein a fee is charged by the liquidity vehicle in connection with the purchase of the at least one offered share in step (b). However, Kiron notes that an advantage of the invention is that open end fund management 'will benefit from reduced volatility in their cash levels, and in the frequently traded customer account assets, resulting in lower fund expense ratios' (Column 3, lines 39-42). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of invention for the securitized fund to charge a fee for the services and benefits provided to the open ended fund.

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Applicant submits that amended claim 8 is not obvious in view of Kiron and alleged common knowledge in the art. Kiron does not disclose any registration of an investment fund with a liquidity vehicle.

Moreover, Kiron does not require any fees from the open end funds, and such a requirement would be unnecessary in light of the fact that the securitized fund management invests assets into these open ended funds based on market performance, not upon liquidity. Thus, Kiron teaches away from amended claim 8.

Thus, applicant respectfully submits that claim 8 is not obvious under 35 U.S.C. § 103(a) in view of Kiron and the alleged common knowledge in the art.

With respect to claims 9 and 10, the Examiner has stated the following:

> **Re Claims 9 and 10**: Kiron discloses the claimed method supra but does not explicitly disclose wherein the fee is determined through an auction or a Dutch auction. Official notice is taken that it was old and well known in the art at the time of invention to utilize an auction or a Dutch auction in order to stimulate competition for service providers. It would have been obvious to a person of ordinary skill in the art to

> modify Kiron to include this step so the customer can receive the best rate possible amongst the providers.

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Applicant submits that claims 9 and 10 (as amended) are not obvious in view of Kiron and alleged common knowledge in the art. Kiron does not disclose any registration of an investment fund with a liquidity vehicle. Moreover, Kiron does not disclose the charging of a fee to the open end funds or the use of an auction in connection therewith.

The newly formed security of Kiron invests in the open end funds based on performance and not by a competitive process (i.e., an auction), and Kiron does not disclose any fees that the open end funds would have to pay to the new security. Thus, Kiron teaches away from claims 9 and 10.

Therefore, applicant respectfully submits that claims 9 and 10 (as amended) are not obvious under 35 U.S.C. § 103(a) in view of Kiron and alleged common knowledge in the art.

With respect to claim 11, the Examiner has stated the following:

> **Re Claim 11**: Kiron discloses the claimed method supra that does not explicitly disclose wherein the fee is determined by the liquidity vehicle. Official notice is taken that it is notoriously old and well known to allow providers to set their own fees as a means to attract customers. It would have been obvious to a person of ordinary skill that competition aspect of Kiron would inherently involve the pricing of the respective fees amongst the liquidity providers. If the providers could not set their own fees, this competition would be eliminated, as the providers would have to accept a rate applied from an outside source.

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Applicant submits that claim 11 is not obvious in view of Kiron and alleged common knowledge in the art. Kiron does not disclose any registration of an investment fund with a liquidity vehicle. Moreover, Kiron does not disclose the charging of a fee to the open end funds.

In light of the fact that the securities fund management of Kiron selects open end funds based on market performance, the competition for the best rate possible to attract customers is not applicable in Kiron. Therefore, Kiron teaches away from claim 11.

Consequently, applicant respectfully submits that claim 11 is not obvious under 35 U.S.C. § 103(a) in view of Kiron and alleged common knowledge in the art.

With respect to claim 12, the Examiner has stated the following:

> **Re Claim 12**: Kiron discloses the claimed method but does not explicitly disclose the step wherein a fee is charged by an entity other than the liquidity vehicle in connection with the purchases of the at least one offered share in step (b). Official Notice is taken that the step of charging a fee for the purchase of stock by by another entity, such as a broker, is notoriously well know in the art. It would have been obvious to a person of ordinary skill in the art to include this step so that third parties are able to facilitate the trading.

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Applicant submits that amended claim 12 is not obvious in view of Kiron and alleged common knowledge in the art. Kiron does not disclose any registration of an investment fund with a liquidity vehicle. Moreover, Kiron does not disclose the charging of a fee in connection with the purchase of at least one offered share. Alleged common knowledge in the prior art does not cure the deficiencies of Kiron.

Therefore, applicant respectfully submits that amended claim 12 is not obvious under 35 U.S.C. § 103(a) in view of Kiron and alleged common knowledge in the art.

With respect to claims 13 and14, the Examiner has stated the following:

> **Re Claims 13 and 14**: Kiron discloses the claimed method supra but does not explicitly disclose wherein the period of time for holding the at least one purchased share in step (c) does not exceed the period between the sale of he at least one share in step (b) to the liquidity vehicle and the date by which the investment fund has experienced a net share inflow following he sale equal to at least the number of shares sold to the liquidity vehicle in step (b) and wherein the period of time for holding the at least one purchased share in step (c) does not exceed a predetermined number of days more than the period between the sale of the at least one share in step (b) to the liquidity vehicle and the date by which the investment fund has experienced a net share inflow following the sale equal to at least the number of shares sold to the liquidity vehicle in step (b). However, Kiron does disclose that an open fund 'when scrutinized, can be listed on a stock exchange and traded at any second, minute or hour, regardless of the open fund N.A.V. (Column 3, lines 11-13). Therefore it would have been obvious to a person of ordinary skill in the art to utilize the system of Kiron to perform these steps so that investors can buy or sell the securitized fund as often as they wish.

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Applicant submits that it would not have been obvious to use the system of Kiron to perform the methods of amended claims 13 and 14. Kiron does not disclose any registration of an investment fund with a liquidity vehicle. The reference by the Examiner to investors buying or selling as often as they wish does not cure the differences of Kiron. Moreover, the period-of-time limitations of amended claims 13 and 14 are not disclosed in Kiron nor are they obvious variations of Kiron.

Therefore, applicant respectfully submits that claims 13 and 14 are not obvious under 35 U.S.C. § 103(a) in view of Kiron and the alleged common knowledge of art.

With respect to claims 15, 16, and 17, the Examiner has stated the following:

> **Re Claims 15 and 16**: Further system claims would have been obvious in order to implement the previously rejected method claims 1-14 and are therefore rejected using the same art and rationale.

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> **Re Claim 17**: Further computer readable medium claims would have been obvious in order to implement the previously rejected method claims 1-14 and is therefore rejected using the same art and rationale.

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Although amended claims 15 and 16 are system claims and amended claim 17 is a computer-readable medium claim, these claims contain similar limitations to those of amended claim 1. Therefore, for similar reasons as those expressed above with respect to amended claim 1, applicant submits that amended claims 15, 16, and 17 are not obvious under 35 U.S.C. 103(a) in view of Kiron and alleged common knowledge in the art.

Applicant respectfully submits that new claims 18-23 are not obvious under 35 U.S.C. 103(a) in view of Kiron and alleged common knowledge in the prior art. For new claims 18, 20, and 22, the reasons are similar to the reasons expressed with respect to claims 8 (as amended) and claim 9. For new claims 19, 21, and 23, the reasons are similar to the reasons expressed with respect to amended claim 13.

It is respectfully submitted that in view of the amendments and arguments set forth herein, the applicable rejections and objections have been overcome.

If there are any additional charges not covered by any checks submitted, please charge Deposit Account No. 02-2666.

Respectfully submitted,

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